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Before the
Federal Communications Commission
Washington, D.C. 20554

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In re Applications of) MM Docket No. 88-577
LIBERTY PRODUCTIONS,)
A LIBERTY PARTNERSHIP) File No. BPH-870831MI
Et. Al.)
For Construction Permit for)
New FM Channel 243A)
Biltmore Forest, North Carolina)

To: The Commission

OPPOSITION TO MOTION TO ENLARGE ISSUES

Liberty Productions, a Limited Partnership ("Liberty") by counsel herewith submits its opposition to the Motion to Enlarge Issues filed by Willsyr Communications, Limited Partnership ("Willsyr") on November 24, 1999 in the above referenced proceeding. In support whereof the following is shown:

1. Willsyr contends that its Motion is timely pursuant to 47 CFR 1.229(b)(3), providing for the submission of requests for enlargement within 15 days of the discovery of new evidence. As will be demonstrated, Willsyr's contention is erroneous. Pursuant to 47 CFR 1.229(d), motions to enlarge issues are required to be premised upon factual allegations, supported by the statement of one having personal knowledge of the facts. Willsyr's Motion is not so supported. In the absence of such support, the Commission may consider only those matters raised by Willsyr with respect to which it properly may take official

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notice.

2. Willsyr claims that its Motion is premised upon "matters contained in" Liberty's November 10, 1999 Amendment. However, the only "matter" which Willsyr's Motion addresses is its contention that Liberty's certification that it was entitled to a 35% bidding credit was made in bad faith and constituted a "frivolous certification." As such Willsyr's Motion is untimely filed. Biltmore Forest FM, Inc. and Orion Communications filed timely Motions to Enlarge on November 12, 1999. Both of those Motions sought issues based upon Liberty's claim to entitlement to the new entrant credit. Biltmore Forest FM, Inc.'s Motion specifically addressed precisely the same matter as does Willsyr's, i.e., the significance of Liberty's Loan Agreement with Cumulus Broadcasting, Inc. Thus, all of the evidence upon which Willsyr purports to rely was available to it prior to November 12, 1999, the deadline for filing motions to enlarge, based upon then available evidence. The matters which Willsyr's Motion addresses were all disclosed in an amendment to Liberty's short form application, filed September 27, 1999. Accordingly, Willsyr failed to assure the timely filing of its Motion and has failed to offer any excuse in that regard. Accordingly, the Motion must be dismissed.

3. With regard to Willsyr's claim that Liberty "cleverly waited until after August 20, 1999...to finalize the loan agreement with Cumulus", this contention is unsupported by any evidence, whatsoever, and entirely frivolous. Liberty has

certified that it had neither any agreement nor understanding with Cumulus on August 20, 1999. Therefore, it had nothing to "formalize", much less be "clever" about not formalizing. Willsyr's bad faith contention to the contrary is entirely baseless and unjustified.

4. While Willsyr asserts that "the Commission made it very explicit that media interests as of and after August 20 would be attributable," it offers no citation to the language of any decision, public notice or news release. Its failure to do so speaks volumes. Contrary to Willsyr's gratuitous assertions, the Commission determined that an applicant's entitlement to the new entrant bidding credit would be determined on the basis of the media interests attributable to it as of the deadline for submission of short form applications. See: Public Notice (DA 99-1346), released July 9, 1999 ("DA 99-1346")("The bidder's attributable interests shall be determined as of the short form (FCC Form 175) filing deadline -- August 20, 1999."). In this case that deadline was August 20, 1999. As of that date Liberty had no agreement or understanding with Cumulus. Accordingly, determined as of that date, there were no media interests attributable to Liberty and, thus, it was entitled to claim a 35% new entrant bidding credit.

5. Neither Willsyr nor any other party challenged the Commission's determination that a bidder's entitlement to new entrant credit would be determined based upon the interests that were attributable to it as of the short form filing deadline.

Actions taken pursuant to delegated authority are effective upon release to the public and any petition for reconsideration or application for review of an action taken pursuant to delegated authority must be filed within thirty (30) days of the effective date of such action. Inasmuch as no such petition or application for review was filed, challenging that determination, and the Commission did not reverse or modify the determination on its own motion pursuant to 47 CFR 1.117, it constitutes a final action of the Commission and is no longer subject to reconsideration or review.

6. Accordingly, the media interests of Cumulus are not attributable to Liberty because, as of August 20, 1999, the deadline for the submission of Liberty's short form application, there existed no agreement or understanding between Liberty and Cumulus which could have given rise to any attribution. Therefore, Liberty's claim that it was entitled to the new entrant bidding credit was neither made in bad faith nor frivolous.

7. In summary, Willsyr's Motion is untimely and must be dismissed on that basis alone. It likewise is not supported in the manner required by 47 CFR 1.229(d). The contentions Willsyr raises are without merit and unsupported by any evidence whatsoever. Nor may Willsyr be permitted to cure these glaring defects by means of a responsive pleading. In short, Willsyr's Motion is utterly frivolous in nature and subject to dismissal without consideration.

WHEREFORE, premises considered, the Motion to Enlarge
Issues, filed by Willsyr should be DISMISSED OR DENIED.

Respectfully Submitted

LIBERTY PRODUCTIONS,
A LIBERTY PARTNERSHIP

By: 

Timothy K. Brady
Its Attorney

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December 3, 1999

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this 3rd
day of December, 1999, served a copy of the foregoing Opposition
to Motion to Enlarge Issues by First Class mail, postage prepaid
upon the following:

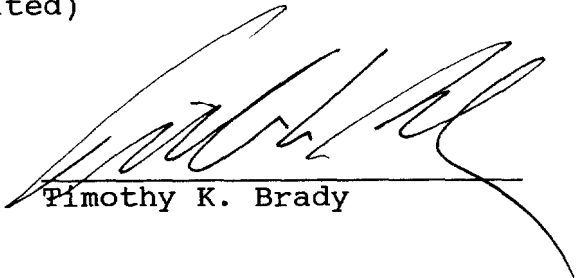
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